

Ever.by-laws

BY-LAWS
OF
EVERGREEN AT HAMILTON

ARTICLE I
NATURE OF BY-LAWS

These By-Laws are intended to govern the administration of Evergreen at Hamilton, hereinafter referred to as the (Homeowners Association), a non-profit corporation organized under Title 15 of the Revised Statutes of New Jersey, together with the management, administration, utilization and maintenance of the Property described in the Declaration of Covenants and Restrictions for Evergreen at Hamilton, Section I and any amendments or supplements thereto. Unless the context clearly indicates otherwise, all definitions set forth in the aforesaid Declaration are incorporated herein by reference.

ARTICLE II
MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Members.

All Owners of Homes in the Community shall be Members of the Homeowners Associates provided however, that any person, firm, association, corporation or legal entity who holds such title or interest merely as a security for the performance of an obligation (including but not limited mortgagees or trustees under deeds of trust) shall not be a member of the Homeowners Association. Membership in the Association shall lapse when any Member ceases to be the record owner of a home. Said membership shall entitle the Member to Vote for a Delegate to represent him and other Home

Owners designated by Declarant at all meetings of the Delegates and to participate and utilize all of the recreational facilities available to the Homeowners Association and its members, subject to the Declaration, the Articles of Incorporation, By-Laws and the Rules and Regulations of the Homeowners Association, as same may be amended from time to time.

SECTION 2. Associate Members.

Every person who is entitled to possession and occupancy of a Home as a tenant or lessee of a Home Owner may be an Associate Member of the Association, but shall not be entitled to any vote with respect to Association matters.

SECTION 3. Change of Membership.

Change of membership shall be accomplished by recording in the Mercer County Clerk's Office a deed or other instrument establishing a record title to a Home and delivery to the Secretary of the Association of a certified copy of such instrument. The membership of the prior Home Owner shall be thereby terminated.

SECTION 4. Allocation of Votes.

~~There shall be one vote of equal weight for each Home ultimately constructed in the Community.~~ When more than one person holds title, the vote for each Home shall be exercised as the Co-Owners among themselves determine. When one or more Co-Owners signs an absentee ballot or purports to vote for his or her Co-Owners, such vote shall be counted unless one or more of the other Co-Owners is present and objects to such vote; or, if not present, submits an absentee ballot or objects in a writing delivered to the Secretary of the Association before the votes are counted. If the Co-Owners disagree as to the vote, the vote shall be split equally among the Co-Owners. Initially there shall be 433 votes based upon the approved

preliminary and final I, III and IV subdivision plan of the Community, all of which shall be held by the Declarant who shall be deemed to be a Member of the Homeowners Association. Upon conveyance of title of a Home to another Owner by Declarant such Owner shall be entitled to one vote for each Home conveyed, and the number of votes held by Declarant shall be reduced accordingly. Declarant's votes shall be cast at all Delegates meetings by such person(s) as it may from time to time designate. Votes not held by Declarant shall be cast in person or by absentee ballot, as otherwise provided herein. Despite anything to the contrary herein, it is understood that in the event that the numbers of Homes ultimately built upon the Property is less than 433, the number of votes in the Homeowners Association shall be equal to the number of Homes ultimately built.

SECTION 5. Interest in the Common Property.

Each Owner, including Declarant, shall have a membership interest in the Homeowners Association and a beneficial interest in and to the Common Property equal to and in proportion with the number of votes which he holds pursuant to Section 2 hereof. Such interest shall be appurtenant to and indivisible from ownership of his Home or, in Declarant's case only, from ownership of any proposed Homes contemplated by the Declaration. Each Owner who is entitled to membership in the Association pursuant to these By-Laws shall be privileged to use and enjoy the Common Property subject to the right of the Association to promulgate rules and regulations governing such use and enjoyment, and subject further to the provisions of Section 4 of this Article II.

SECTION 6. Suspension of Rights.

The membership rights of any Owner or Member (including, but not limited to the right to vote) may be suspended by action of the Board

during the period when such Owner's or Member's assessments remain unpaid; but upon payment of such assessments (whether by check or cash), his rights and privileges shall be automatically restored. If the Board has adopted and published rules and regulations governing the use of the Common Property and the personal conduct of persons thereon, the Board may, in its discretion, suspend the rights and privileges of any such person for violation of any such rules and regulations for a period not to exceed thirty (30) days for any single violation, but if the violation is of a continuing nature, such rights and privileges may be suspended indefinitely until such time as the violation is abated. No such action shall be taken by the Board until the Owner or Member is afforded an opportunity for a hearing consistent with the principles of due process of law.

SECTION 7. Absentee Ballots.

Proxy ballots shall not be permitted. Absentee ballots shall be permitted at all elections for Delegates or Trustees and on all amendments to the Articles of Incorporation, the Declaration, these By-Laws, or any other matter upon which a Delegate is entitled to vote. All absentee ballots shall be in writing, signed by the individual Member (or in the case of joint owners by any one of them) and shall be delivered to the Secretary of the Association, or such other person as the President may designate, at least 24 hours prior to the commencement of the meeting at which ballots are to be cast. All absentee ballots shall be substantially in the form prescribed by the Board, and if not in such form, shall be deemed invalid, which determination shall be made in the sole and absolute discretion of the Board.

ARTICLE III

ELECTION AND MEETINGS OF DELEGATES

SECTION 1. Election of Delegates.

During the same month of each year on a date to be designated by the Board commencing that year following the year in which possession of 25% of all Homes have been delivered to individual purchasers, but in no event after five (5) years, the Board shall cause one or more meetings to be held at which the Owners of Homes within the Community shall elect a Delegate to represent them at all meetings of Delegates. Such election shall be conducted in accordance with Robert's Rules of Order. Except as otherwise provided by law, written notice of each such meeting shall be given to the appropriate Owner(s) at least ten (10) days in advance thereof. If any election of Delegates shall not be held on the day designated herein, the Board shall cause the election to be held at a special meeting as soon thereafter as may be practicable.

In furtherance of the election of Delegates, Declarant shall within sixty (60) days after the initial conveyance by it of any Home to an individual purchaser, assign each Home to a voting district containing no more than fifty (50) Homes. Such district shall have been established by Declarant and once established shall not thereafter be changed under any circumstances.

SECTION 2. Place of Meeting.

All meetings of the Members of the Delegates shall be held at the principal office of the Homeowners Association or at such other suitable place convenient to the Members as may be designated by the Board.

SECTION 3. Annual Meetings of Delegates.

All Annual Meetings of the Delegates shall be held during the same month of each year succeeding the first annual meeting on a date to be designated by the Board from year to year, except that such first, annual or special meeting shall be held not more than sixty (60) days after owners other than the Declarant own 25% of all Homes, or on such earlier date as Declarant in its sole discretion may elect, but in no event after five (5) years from the date hereof. At the first annual meeting and each subsequent meeting, or at an adjournment of such meeting, the election of Trustees shall take place. If such election is not so held, the Board shall cause the election to be held at a special meeting as soon thereafter as may be convenient. At such special meeting, the Delegates may elect the Trustees and transact other business with the same force and effect as at an annual meeting duly called and held.

All absentee ballots validly received for the originally scheduled meeting shall remain in full force and effect for any such adjourned meeting or such special meeting, and new absentee ballots may be received for any such subsequent meeting.

SECTION 4. Special Meetings of Delegates.

After the first Annual or Special Meeting, Special Meetings of Delegates may be called by the President when required by Article IV, Section 2 of these By-Laws or whenever the President deems such a meeting advisable or shall be called by the Secretary when so ordered by the Board or upon the written request of Delegates representing not less than twenty-five (25%) percent of all the votes entitled to be cast at such meeting. Such request shall state the purpose or purposes of such meeting and the matter proposed to be acted upon. The Secretary shall give notice stating

the purpose or purposes of the meeting to all Delegates entitled to vote at such meeting. Unless upon the request of Delegates representing at least fifty (50%) percent of all votes entitled to be cast at such meeting, no Special Meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Delegates held during the preceding twelve months, which determination shall be made in the sole and absolute discretion of the Board.

SECTION 5. Notice of Delegates Meeting.

Except as otherwise provided by law, notice of each Meeting of Delegates, whether Annual or Special, shall be given not less than ten (10) days, nor more than ninety (90) days before the day on which the Meeting is to be held, to the Delegate of each constituent voting district within the Community at his last known address, by delivering a written or printed notice thereof to him personally, or in the manner provided for in Article VI, Section 2 of the Declaration. Except where expressly required by law, no publication of any notice of a Meeting of Delegates shall be required. Every such notice shall state the time and place of the meeting and shall state briefly the purposes thereof. Notice of any Meeting of Delegates shall not be required to be given to any Delegate who shall attend such Meeting in person or by proxy. Notice of any adjourned Meeting of Delegates shall be required to be given.

SECTION 6. Quorum.

At each meeting of the Association, Delegates in good standing (including Declarant or its representative), ~~who represent twenty five (25%) percent of the total authorized votes entitled to be cast, in person or by absentee ballot, shall constitute a quorum for the transaction of business except where otherwise provided by law.~~ In the absence of a quorum, the

representatives present in person or by absentee ballot and entitled to vote, by majority vote, shall adjourn the Meeting to a new date until a quorum shall be present or represented. At any such adjourned Meeting, any business may be transacted which might have been transacted at the meeting as originally called.

SECTION 7. Organization.

At each Meeting of Delegates, the President, or in his or her absence, the Vice President, or in the absence of both of them, a person chosen by a majority vote of the Delegates present in person or represented by absentee ballot and entitled to vote thereat, shall act as Chairperson, and the Secretary or in his or her absence, a person whom the Chairperson shall appoint, shall act as Secretary of the Meeting.

SECTION 8. Voting.

Except as otherwise required by the Articles of Incorporation, the Declaration or any law,

(a) A quorum being present, a majority of votes entitled to be cast by the Delegates in person or by absentee ballot shall be sufficient on those matters which are to be voted upon. All meetings of the Delegates both annual and special, shall be deemed to be meetings of the Members of the Homeowners Association, and no votes shall be cast by any individual Member on any matter except through his duly elected Delegate or his representative at a Delegate's Meeting. All designated or elected representatives shall be notified prior to any meeting.

(b) Each Delegate or his representative may divide the votes which he represents in any manner which is authorized or otherwise appropriate and if there is not express obligation to the contrary, he may cast said votes in his discretion in such manner as he deems appropriate to

assist in the conduct of the affairs of the Community or the Homeowners Association. The election of the Board shall be by ballot. Unless demanded by a majority of the votes present at such meeting and entitled to be cast thereat or determined by the Chairperson of the meeting to be advisable, the vote on any other question need not be by ballot.

(c) If at any meeting of the delegates, a vote by ballot shall be taken on any question, the chairperson of such meeting shall appoint two judges to act thereat with respect to such vote. Each judge so appointed shall first subscribe an oath faithfully to execute the duties of a judge at such meeting with strict impartiality and according to the best of his ability. Such judges shall report the number of votes represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and when the voting is completed, shall ascertain and report the number of votes respectively for and against the question; but, as to the election of Trustees, the number of votes received by each candidate need not be reported. Reports of judges shall be in writing and subscribed and delivered by them to the Secretary of the meeting. The judges need not be delegates, and any officer of the Association may be a judge on any question other than a vote for or against his election to any position with the Association or any other question in which he may be directly interested.

SECTION 9. Conduct of the Annual or Special Meeting of the Delegates.

The order of business at the Annual Meeting of the Delegates or at any Special Meeting as far as practicable shall be:

- (a) Calling of the roll and certification of absentee ballots.
- (b) Proof of notice of meeting and waiver of notice.
- (c) Reading and disposal of any unproved minutes.

- (d) Appointment of judges of election, if appropriate.
- (e) Election of Trustees, if appropriate.
- (f) Receiving reports of officers.
- (g) Receiving reports of committees.
- (h) Old business.
- (i) New business.
- (j) Adjournment.

ARTICLE IV

BOARD OF TRUSTEES

SECTION 1. Express and Implied Powers and Duties.

The Property, affairs and business of the Homeowners Association, shall be managed by the Board of Trustees, which shall have all those powers granted to it by the Articles of Incorporation, the Declaration, these By-Laws and by law.

SECTION 2. Number and Qualifications.

(a) The affairs of the Association shall be governed by the Board initially consisting of the five (5) persons named in the Articles of Incorporation of the Association or such other persons who may be designated by Declarant to fill any vacancy which may occur, none of whom need be Home Owners and who shall serve for a term ending not later than sixty (60) days after Owners other than Declarant own 25% or more of all Homes.

Within 60 days after Owners other than Declarant own 25% of all Homes, the President shall call and give not less than twenty nor more than thirty days notice of a Special Meeting of the Delegates. At such Special Meeting, the Board shall be expanded to consist of seven (7) members, two of whom shall be elected by Delegates representing Owners other than

Declarant and five of whom shall be appointed by Declarant, to serve for a term ending not later than sixty (60) days after Owners other than Declarant own fifty percent.

Thereafter, the Board shall consist of seven (7) persons (hereinafter referred to as Trustees or Trusteeships A, B, C, D, E, F, and G). Within ~~sixty (60) days after Owners other than Declarant own 50% or more~~ of all the Homes, the President shall call and give not less than twenty (20) nor more than thirty (30) days notice of a Special Meeting of the Delegates. At such Special Meeting, Delegates other than Declarant shall be entitled ~~to vote for and elect Trustees A, B and C~~ and Declarant shall have the right to appoint the Trustees D, E, F and G.

Thereafter, and within sixty (60) days after Delegates other than Declarant own 75% or more of all the Homes, the President shall call and give not less than twenty (20) nor more than thirty (30) days notice of a Special Meeting of the Delegates of the Association. At such Special Meeting, Delegates other than Declarant shall be entitled to vote for all of the Trustees of the Board not theretofore elected by them, except that Declarant shall be entitled to appoint Trustee G so long as Declarant owns one or more homes and holds same for sale in the ordinary course of business.

The Declarant at its discretion, may surrender its right to appoint any or all Trustees at a time earlier than that required above, provided that if such early surrender shall vest control of the Board in Home Owners, the Owners agree to assume control by majority vote.

(b) In the case of partnership owners, Trustees shall be members, agents or employees of such partnership or of the partners thereof; or, in the case of corporate owners, Trustees shall be officers,

stockholders, employees or agent of such corporation; or, in the case of fiduciary owners, Trustees shall be fiduciaries or officers or employees of such fiduciaries; provided, however, that at least one of the Trustees of the Board shall be a resident of the State of New Jersey.

(c) All officers of the Board must be members of the Homeowners Association, except those appointed by the Board during that period that it is under the control of Trustees appointed by Declarant.

SECTION 3. Election and Term of Office.

All Trustees, whether elected by Delegates, or appointed by Declarant, shall hold office until their respective successors have been duly elected and qualified or until removed in the manner hereinafter provided. Until Owners other than Declarant own 75% or more of all the Homes, Trustees elected by Delegates representing Owners other than Declarant shall have a two year term of office commencing on the date of their election. At the expiration of a term of office, such offices shall be filled by the Members other than Declarant at an election called for this purpose by the Board following the same procedure utilized in electing initial Trustees.

~~At the Special Meeting held after Owners own at least 50% of all the Homes, three Trustees shall be elected to a three year term and four Trustees shall be elected to a two year term provided that should Declarant elect to appoint a Trustee, only three Trustees shall be elected to a two year term.~~ Thereafter, Trustees elected by Delegates shall be elected for a two year term; it being the purpose and intent hereof that three Trustees shall be elected in alternate years to the remaining four Trustees.

If at any meeting for election of membership to the Board more than twice the number of candidates to be elected at such meeting are nominated, then, and in such event, there shall be two ballots for such membership.

At the end of the first ballot, the field of nominees shall be reduced so that there are twice as many candidates as there are positions to be filled, with the persons receiving the fewest votes being eliminated from the ensuing ballot. A second ballot shall be held, and on the second ballot, the persons receiving the most votes will be deemed to be elected in order to fill the vacant positions. If there are not more than twice the number of nominees for the number of positions to be filled, then there shall be one ballot, with the persons receiving the most votes being elected in order to fill the vacancies on the Board. If ever applicable, candidates polling the highest votes will be considered elected for the longest period of years. Election of Trustees at successive annual meetings shall be in accordance with this Section 3.

SECTION 4. Declarant's Protective Provision.

After control of the Board has become vested in Trustees elected by Owners other than Declarant, and for so long as Declarant owns at least one Home and holds same for sale in the ordinary course of business, the following shall apply:

(a) Neither the Homeowners Association nor its Board of Trustees shall take any action that will impair or adversely affect the rights of Declarant nor cause Declarant to suffer any financial, legal, or other detriment, including but not limited to any direct or indirect interference with the sale of Homes, or the assessment of Declarant as an Owner, or otherwise, nor capital improvements.

(b) The Homeowners Association and its Board shall continue at least the same level of maintenance, operation and services as provided immediately prior to such assumption of control of the Board.

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(c) In furtherance of the foregoing provisions, Declarant shall have the right to veto any and all actions of the Association or its Board which the Declarant in its sole judgment, determine to be detrimental to Declarant's interest.

(d) Declarant shall exercise its veto right, in its sole and absolute discretion within ten (10) days after its receipt of written notice that a resolution or other action is proposed or has been taken by the Association or its Board. In such event, Declarant shall notify the Secretary of the Association of its exercise of its veto right and any such proposal or action shall be null and void and shall be determined to have no further force or effect.

The aforementioned protective provisions shall be construed in accordance with and not in derogation of the provisions of N.J.A.C. 5:26-8.4 of the regulations promulgated pursuant to the New Jersey Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq. If there is any dispute between the Board and Declarant as to any matter contemplated by this Section 4, the matter shall be submitted to arbitration in accordance with the rules of the American Arbitration Association, and the new policy or procedure that has been proposed by the Board shall not become effective pending the final decision of the arbitrators.

SECTION 5. Removal of Members of the Board.

At any duly held regular or special meeting of the Delegates, and upon the express prior notice as provided in Section 5 of Article III hereof, any one or more Trustees may be removed with or without cause by a majority of all votes entitled to be cast, and a successor may then and there or thereafter be elected to fill the vacancy thus created. Any Trustee whose removal has been proposed shall be given an opportunity to be heard at the

meeting. When a member of the Board who has been elected by Home Owners other than Declarant is removed or resigns, that vacancy shall be filled by a Home Owner other than Declarant. This provision shall not apply to any Trustee appointed by Declarant. Any Declarant appointed Trustee may be removed with or without cause by Declarant and a successor may be appointed by Declarant to fill the vacancy thus created.

SECTION 6. Vacancies.

Vacancies in the Board caused by any reasons other than the removal of a Trustee by a vote of the Delegates of the Homeowners Association shall be filled by a vote of a majority of the remaining Trustees, excluding the Declarant's appointees. Such vacancies shall be filled at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the Trustees present at such meeting may constitute less than a quorum. Each person so elected shall be a Trustee for the remainder of the term of the Trustee whose term he is filling and until his successor shall be elected.

SECTION 7. Meeting of the Board; Notices; Waiver of Notices.

The first meeting of the Board following the first Annual Meeting of the Delegates and Trustees shall be held within ten (10) days thereafter at such time and place as shall be fixed by a majority of the Delegates and Trustees at the annual meeting of the Delegates and Trustees and no notice shall be necessary. Thereafter, regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Delegates and Trustees, but at least two meetings shall be held each year. Notice of regular meetings of the Board shall be given to each Delegate and Trustee by telephone, mail or telegram at least seven (7) business days prior to the day of the meeting. Special meetings of the

Board may be called by the President on three (3) business days notice to each Delegate and Trustee, given by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board shall be called by the President or the Secretary in like manner and on like notice on the written request of at least three (3) Trustees.

Any Trustee and Delegate, at any time, may waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by Trustees and Delegates at any meeting of the Board shall constitute a waiver of notice by him of the time and place thereof. If all the Trustees and Delegates are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting. In the discretion of the Board, meetings of the Board, or portions thereof, may be open to Members of the Homeowners Association for observation or participation in such manner and to the extent the Board may deem appropriate.

7.1 A. OPEN MEETINGS OF ASSOCIATION

1) OPEN MEETINGS

All meetings of the association's Executive Board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all unit owners.

(2) RESTRICTIONS ON OPEN MEETINGS

Despite (1) above, the Association's Executive Board may exclude or restrict attendance at those meetings or portions of meetings dealing with the following:

(A) Any matter the disclosure of which would constitute an unwarranted invasion of individual privacy;

(B) Any pending or anticipated litigation or contract negotiations;

(C) Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer, or

(D) Any matter involving the employment, promotion, discipline or dismissal of a specific employee of the association.

(3) MINUTES AT OPEN MEETINGS

At each meeting required to be open to all unit owners, minutes of the proceedings shall be taken and copies of those minutes shall be made available to all unit owners before the next open meeting.

(A) Each association shall keep reasonably comprehensive minutes of all its meetings, showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member and any other information required to be shown in the minute by the By-Laws. Such minutes shall be made available to the public in the association office within _____ days (time period not to exceed 30 days).

(B) At each open meeting the participation of unit owners in the proceedings or the provision of a public comment session shall be at the discretion of the Executive Board.

B. NOTICE REQUIREMENTS FOR OPEN MEETINGS

(1) NOTICE.

Adequate notice of any open meeting shall be given to all unit owners.

(2) ADEQUATE NOTICE.

Adequate notice means written advance notice of at least 48 hours, giving the date, time, location and to the extent known, the agenda of any regular, special, or rescheduled meeting. Such notice shall accurately state whether formal action may or may not be taken. This notice shall be:

(a) Prominently posted in at least one place within the condominium property reserved for such or similar announcements.

(b) Mailed, telephoned, telegraphed, faxed, or hand delivered to at least two newspapers designated by the association governing board.

(c) Filed with the association secretary or administrative office responsible for administering the association business office.

(3) ANNUAL POSTING OF OPEN MEETINGS

At least once each year within seven (7) days following the annual meeting of the association, the governing body shall post and maintain posted throughout the year, notice of meetings in those locations set forth above.

C. EMERGENCY MEETINGS

In the event that an association's executive board meeting is required to deal with such matters of urgency and importance that delay, for the purpose of providing 48 hours advance notice, would result in substantial harm to the interests of the association, the notice shall be deemed adequate if it is provided as soon as possible following the calling of the meeting.

D. VOTING RIGHTS

Except as otherwise provided in these By-Laws, the Master Deed, or the Planned Real Estate Full Disclosure or Condominium Acts, passage of all decisions shall require the affirmative vote of at least a majority of members in good standing and entitled to vote in attendance at a meeting.

(1) GOOD STANDING

Only unit owners who hold memberships in good standing at least (insert time period before the meeting) shall be entitled to vote on decisions. Each unit owner shall be entitled to the assigned vote for each unit to which he holds title with respect to all decisions to be voted upon by the association membership.

(2) QUORUM

Except as otherwise provided in these By-Laws, the presence (in person or by proxy) of (insert percentage 50%) of the authorized votes shall constitute a quorum for the transaction of business at the meeting. If any association meeting cannot be organized because a quorum has not been achieved, the members present or by proxy shall adjourn the meeting for at least 48 hours from the time the original meeting was scheduled.

E. WAIVER OF NOTICE OF MEETINGS (OPTION)

Any action which may be taken at a meeting of members may be taken without a meeting if authorized by a writing signed by the required percentage of members entitled to vote for that particular matter (See D(1)).

F. COMMON EXPENSES

(1) NOTICE OF COLLECTION

The Board shall give written notice to each unit owner of the amount estimated by the Board for the forthcoming budget year. This

notice shall be directed to the unit owner at his last known address by ordinary mail or hand delivery. In the event common expenses are not paid by the unit owner as required, the Board may assess fines, liens, delinquency assessments, costs of collection and interest at _____ per annum.

(2) SURPLUS FUNDS

Any surplus of common expense funds remaining after payment of the common expenses may be used by the association for any lawful purpose. The unused portion shall be proportionately divided among unit owners based on their interests in the common elements. This surplus shall be credited to the unit owners' forthcoming years annual common expense assessment.

G. AMENDMENTS TO BY-LAWS

These By-Laws may be amended, altered or repealed at any association meeting upon which previous notice to amend, alter or repeal has been given to unit owners. These By-Laws may be amended with an affirmative vote in person or by proxy of a majority of the association members in good standing. No amendment of these By-Laws shall be effective until recorded in the same office as the existing By-Laws.

SECTION 8. Quorum and Adjourned Meetings.

At all meetings of the board, a majority of the Trustees shall constitute a quorum for the transaction of business and the votes of a majority of the Trustees present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board there shall be less than a quorum present, the majority of those present shall adjourn the meeting to a new date. At any such adjourned meeting at which a quorum is present, any business which may have been

transacted at the original meeting may be transacted without further notice. The vote of a majority of those present at a Board meeting at which a quorum is present shall be necessary for valid action by the Board.

SECTION 9. Joinder in Meetings by Approval of Minutes.

The transaction of any business at any meeting of the Board however called and noticed or wherever held, shall be valid as though a meeting duly held after regular call and notice, if a quorum is present; and if, either before or after the meeting, each Trustee signs a written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof or of the resolution or act adopted at such meeting. All such waivers, consents or approval, shall be in writing and filed with the Secretary and made a part of the minutes of the meeting even though filed subsequent thereto.

SECTION 10. Non-Waiver.

All the rights, duties and privileges of the Board shall be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or rights hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board.

SECTION 11. Consent in Lieu of Meeting and Vote.

Anything to the contrary in these By-Laws, the Articles of Incorporation or the Declaration notwithstanding, the entire Board shall have the power to take action on any matter on which it is authorized to act, without the necessity of a formal meeting and vote if all the Trustees shall consent in writing to such action.

ARTICLE V

POWERS AND DUTIES OF BOARD OF TRUSTEES

SECTION 1. General Powers.

The property, affairs and business of the Community shall be managed by the Board of Trustees, which shall have all those powers granted to it, or necessarily implied by law or by the Articles of Incorporation, these By-Laws or any Declaration of Covenants, Conditions and Restrictions or other instrument which vests any rights or obligations in the Homeowners Association with respect to the Community or otherwise which it shall exercise in its sole discretion, including, but not limited to the following:

(a) Employ, by contract or otherwise, a manager, managing agent or an independent contractor, to oversee, supervise and follow out the responsibilities of the Board. Said manager or said independent contractor shall be compensated upon such terms as the Board deems necessary and proper; and

(b) Employ any person, firm or corporation to repair, maintain or renovate the Common Property and Homes, lay pipes or culverts; to bury utilities; to put up lights or poles; to erect signs and traffic and safety controls of various sorts on said Property; and

(c) Employ professional counsel and to obtain advice from persons, firms or corporations such as, but not limited to, landscape architects, engineers, lawyers and accountants; and

(d) Employ or contract for water and sewer, electricity and gas or other forms of utilities, cable or master antenna television; and

(e) Employ all managerial personnel necessary, or enter into a managerial contract for the efficient discharge of the duties of the Board hereunder; and

(f) Adopt, amend and publish rules and regulations covering the details of the operation and use of the Property including, but not limited to pet controls; and

(g) Secure full performance by Member of all items of maintenance for which they are responsible; and

(h) Arrange for security protection as necessary; and

(i) Enforce obligations of the Members and do anything and everything else necessary and proper for the sound management of the Property, including the right to bring or defend lawsuits to enforce the terms, conditions and restrictions contained in the Declaration, these By-Laws and any rules and regulations governing the Property or Members. The Board shall also have the power to levy fines against any Member(s) for violations of any of the foregoing. Collection of fines may be enforced against any Member(s) involved as if the fine were a Common Expense owed by the particular Member(s) and such fines shall constitute a lien upon the particular Member's Home. Before any fine is imposed by the Board the Member accused shall have been given notice and afforded an opportunity to be heard with respect to the alleged violation in a manner consistent with the principles of due process of law; and

(j) Borrow and repay monies giving notes, mortgages or other security upon such term or terms as it deems necessary provided, however, that no Common Property of the Homeowners Association may be utilized as security for any such loan for so long as the Board is controlled by Declarant; and

(k) Invest and reinvest monies, sue and be sued; collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and all other powers contained herein, and those necessary and incidental thereto; and

(l) Grant and obtain easements, licenses and other property rights with respect to contiguous lands; and

(m) Purchase or lease or otherwise acquire in the name of the Association or its designees, corporate or otherwise, on behalf of all Members, Homes offered for sale or lease or surrendered by their Owners to the Board; and

(n) Purchase tax sales certificates for title to Homes at foreclosure or other judicial or administrative sales in the name of the Association or its designees, corporate or otherwise, on behalf of all Members; and

(o) Sell, lease, mortgage (but not vote the votes appurtenant thereto) or otherwise deal with Homes acquired by the Association, and sublease any such Homes leased by the Association or its designees, on behalf of all Members; and

(p) Bring and defend actions by or against one or more Owners pertinent to the health, safety or general welfare of the Members or any other legal action to which the Owners may consent in accordance with these By-Laws; and

(q) Appoint an Insurance Trustee, who shall not be a member of the Association, an employee of Declarant, or the manager, who shall discharge his duties in accordance with these By-Laws. In the absence of such an

appointment, the Board shall be responsible for the disposition of all insurance proceeds. The Declarant shall not be named as Trustee; and

(r) Create, appoint members to and disband such committees as shall from time to time be deemed appropriate or necessary to aid the Board in the discharge of its duties, functions and powers.

SECTION 1.1 POWERS AND DUTIES

(A) Subject to the Master Deed, Declaration of Covenants and Restrictions or other instruments of creation, the association may do all that it is legally entitled to do under the laws applicable to its form of organization.

(B) The association shall discharge its powers in a manner that protects and furthers the health, safety and general welfare of the residents of the community.

(C) The association shall provide a fair and efficient procedure for the resolution of housing related disputes between individual unit owners and the association and between different unit owners, that shall be readily available as an alternative to litigation.

SECTION 2. Duties and Responsibilities.

It shall be the affirmative and perpetual obligation and duty of the Board to perform the following:

(a) Cause the Common Property, the lawn areas (but not any plantings placed by an Owner on any Lot), the privacy fences erected by the Declarant, the Club House and recreational facilities, and any services to be maintained by a professionally qualified property management firm according to reasonable standards adopted by the Board and set forth in the Declaration, and these By-Laws, including, but not limited to such maintenance, painting, replacement and repair work as may be necessary,

lawn maintenance, clearing of snow from roadways and walkways as deemed appropriate by the Board, maintenance of detention basins and similar water drainage systems; and

(b) Repaint the exterior originally painted surfaces of the individual Homes and garages; and

(c) To investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, in order to properly maintain and operate the Property as contemplated by the Declaration and these By-Laws, Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Homeowners Association; and

(d) Cause to be kept a complete record of all its acts and corporate affairs and to present a summary report thereof to the Delegates at the Annual Meeting or at any Special Meeting when requested in writing at least twenty-one (21) days in advance by Delegates entitled to cast at least twenty-five (25%) percent of the total votes of the Homeowners Association; and

(e) Make repairs, additions, improvements to, or restoration of the Property in accordance with the provisions of these By-Laws and the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings; and

(f) Take such action as may be necessary to comply promptly with any and all orders or requirements affecting the premises maintained by the Homeowners Association placed thereon by any federal, state, county or municipal authority having jurisdiction thereover, and order of the Board of Fire Underwriters or other similar bodies; and

(g) Place and keep in force all insurance coverages required to be maintained by the Homeowners Association, applicable to its property and Members including, but not limited to:

(i) Physical Damage Insurance. Broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring all improvements existing on the Common Property, together with all service machinery appurtenant thereto, and covering the interest of the Homeowners Association, the Board and the Declarant, in an amount equal to the full replacement value of such improvements (exclusive of foundations and footings), without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of an Institutional Lender, if any, which shall provide that the loss, if any, thereunder shall be payable to each Institutional Lender as its interest may appear. Prior to obtaining any policy of fire insurance or any renewal thereof, the Board shall obtain an appraisal of the full replacement value of said improvements upon the Property, without deduction for depreciation, for the purposes of determining the amount of fire insurance to be effected pursuant to this subparagraph.

(ii) Public Liability Insurance. To the extent obtainable, public liability insurance for personal injury and death from accidents occurring within the Common Property, (and any other areas which the Board may deem advisable), and for the defense of any actions brought by reason of injury or death of a person or damage to property, occurring within such areas, and not arising by reason of any act or negligence of any individual Member, Said insurance shall be in such limits as the Board may, from time to time, determine, covering each member of the Board, the managing agent,

the manager, Declarant and Association, and shall also cover cross liability claims of one insured against another. Until the first meeting of the Association, such public liability insurance shall be in amounts of not less than \$1,000,000.00 per occurrence for claims of bodily injury or for property damage. The Board shall review such limits once a year.

(iii) Directors and Officers Liability Insurance. Liability insurance indemnifying the Trustees and officers of the Homeowners Association against the liability for errors and omissions occurring in connection with the performance of their duties, in an amount of at least \$1,000,000.00 with any deductible amounts to be determined in the sole discretion of the Board. Deductible amounts shall be paid by the Homeowners Association and shall be deemed a Common Expense.

(iv) Workers Compensation Insurance. Workers compensation and New Jersey disability benefits insurance as required by law.

(v) Other Insurance. Such other insurance as the Board may determine.

All policies shall: (i) provide that adjustment of loss shall be made by the Board of Trustees with the approval of the Insurance Trustee, if any, and that the net proceeds thereof, shall be payable to the Insurance Trustee, if any; (ii) to the extent obtainable contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured; and (iii) provide that such policies may not be canceled without at least thirty (30) days prior written notice to all of the named insureds.

Any insurance maintained by the Board may provide for such deductible amount as the Board may determine to be in the best interest of the Homeowners Association and the Members. Such deductible amounts shall be

paid by the Homeowners Association, except as expressly provided to the contrary in this subparagraph (g).

The premiums for all insurance and fidelity bonds carried by the Homeowners Association shall be included in the Association Dues.

(h) If there shall have been a repair or restoration pursuant to the first paragraph of this Section 2 and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Association's reserve fund.

(i) To manage the fiscal affairs of the Association as hereinafter provided in Article VI.

ARTICLE VI

FISCAL MANAGEMENT

SECTION 1. Association Dues.

The Board shall have the duty to collect from each Owner, his, her or their heirs, administrators, successors and assigns, as Association Dues, the proportionate part of any assessments as provided in the Declaration, the Articles of Incorporation, these By-Laws, and in accordance with applicable law.

SECTION 2. Determination of Association Dues.

The amount of monies for Association Dues deemed necessary by the Board and the manner of expenditure thereof, including but not limited to, the allocation thereof, shall be a matter for the sole discretion of the Board.

SECTION 3. Disbursements.

The Board shall take and hold the funds as collected and shall disburse the same for the purposes and in the manner set forth herein and

as required by the Declaration, Articles of Incorporation, and applicable law.

SECTION 4. Depositories.

The depository of the Homeowners Association shall be such insured bank or savings and loan institution as shall be designated from time to time by the Board and in which the monies of the Homeowners Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such parties as are authorized by the Board, provided that a management agreement may include among its provisions authority for the manager to sign checks on behalf of the Homeowners Association for payment of the obligation of the Homeowners Association, if the proper fidelity bond is furnished to the Homeowners Association.

SECTION 5. Accounts.

The receipt and expenditures of the Homeowners Association shall be credited and charged to accounts under the following classifications as the Board shall deem appropriate:

(a) Association Dues, which shall include all expenditures within the year for which the budget is made, including reasonable allowances for operational contingencies. Associations Dues shall not include expenditures chargeable to reserves, or to additional improvements, or to operations. At the end of each year the unexpended amount remaining in this account shall be applied to reduce the assessments for Association Dues for the succeeding year, or may be distributed to the membership as the Board shall determine.

(b) Reserve for replacement, which shall include funds for repair or replacement of the common Property and those portions of the improvements located on the Property which the Association is obligated to maintain or

repair, which is required because of damage, depreciation or obsolescence, the amounts in this account shall be allocated among each of the separate categories of replacement items.

(c) Reserve for deferred maintenance and repair which shall include funds for maintenance and repair items that occur less frequently than annually.

(d) Reserve for capital improvements, which shall include funds to be used for capital expenditures or for the acquisition of additional personal property that will be part of the Common Property.

(e) Operations, which shall include all funds from the use of the Common Property or from any other sources. Only the additional direct expense required by any revenue producing operation will be charged to this account. At the end of each year, any unexpended amount remaining in this account may be applied to reduce the assessments for Association Dues for the succeeding year or may be distributed to the membership, to the extent that the Board shall determine and shall be allocated in the same manner that Association Dues are assessed. Losses from the operations or otherwise shall be met by levying special assessments against the Members, which assessments may be made in advance in order to provide a working fund.

The board shall not be required to physically segregate the funds held in the above accounts but, may, in its sole discretion, maintain the funds in one or more consolidated accounts provided that reserves for replacement shall be maintained in a segregated account. As to each consolidated account, the division into the various shares or accounts set forth above need be made only on the Association's records.

SECTION 6. Reserves. The Board shall not be obligated to expend all of the revenues collected under this Article VI in any accounting period, and must maintain reasonable reserves for, among other things, repairs, replacements, emergencies, contingencies of bad weather or uncollected accounts. Despite anything herein to the contrary, the Board in its determination of the Association Dues and the preparation of a budget shall specifically designate and identify that portion of the Association Dues which is to be assessed against the Members as a capital contribution and is allocable to reserves for capital improvement of and to said Property. The amounts assessed and collected for the reserves shall be kept in one or more interest-bearing federally insured accounts or certificates of deposit, and shall not be utilized for any purpose other than that which was contemplated at the time of assessment. The foregoing shall not be construed to mean that the Board shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of its functions.

SECTION 7. Exemption from Payment of Capital Improvements.

Despite anything to the contrary herein neither Declarant, successor Declarant nor any Institutional Lender shall be required to contribute or pay any sums for capital improvements to the Property whether by way of regular or special assessments or otherwise. This provision may not be amended without the written consent of Declarant or successor Declarant and every Institutional Lender who would otherwise not be exempt from the payment of Association Dues for such purpose.

SECTION 8. Notice.

The Board shall give at least fifteen (15) days advance notice to each Member, in writing, and to any Institutional Lender who requires same, of

the amount estimated by the Board for Association Dues for the management and operation of the Homeowners Association for the next ensuing period directed to the Home Owner at the last known address by ordinary mail or hand delivery. Said notice shall be conclusively presumed to have been delivered five (5) days after deposit in the United States mails.

SECTION 9. Annual Assessment.

Monthly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the Association Dues prove to be insufficient, the budget and assessments may be amended at any time by the Board, provided that nothing herein shall serve to prohibit or prevent the Board from imposing a lump sum assessment in the case of any immediate need or emergency which cannot be met by reserve funds earmarked for such contingency.

SECTION 10. Acceleration of Assessment Installment Upon Default.

If an Owner shall be in default in the payment of any installment upon the Association Dues, the Board may accelerate the remaining installments of the assessment and file a lien for such accelerated amount upon notice to the Owner, and if the delinquent installment has not been theretofore paid, the then unpaid balance of the Association Dues shall become due upon the date stated in the notice, which date shall not be less than five (5) days after delivery of the notice to Member, or not less than ten (10) days after the mailing of such notice to Member by registered or certified mail, whichever shall first occur. If such notice is given and default shall continue for a period of thirty (30) days thereafter, then the Board shall be required to accelerate the remaining installments of the annual assessments upon similar notice to the Owner, and to file a lien for such

accelerated assessment as permitted by law; in such latter event the Board may also notify any Institutional Lender holding a mortgage which encumbers the Home affected by such default or publish appropriate notice of such delinquency to the membership of the Association. If said default continues for a period of ninety (90) days then the Board shall foreclose the foregoing lien pursuant to law and/or commence a suit against the appropriate parties to collect said assessment.

SECTION 11. Interest and Counsel Fees.

The Board at its option shall have the right in connection with the collection of Association Dues, or other charge, to impose a late charge of any reasonable amount and/or interest not to exceed the maximum rate permitted by law. In the event that the Board shall effectuate collection of said assessments or charges by resort to counsel, and/or the filing of a lien, the Board may add to the aforesaid assessments or charges a sum or sums of twenty (20%) percent of the gross amount due as counsel fees, plus the reasonable costs for the preparation, filing and discharge of the lien, in addition to such other costs as may be allowable by law.

(a) In case of any action or proceeding brought or defended by the Homeowners Association or the Board pursuant to the provisions of these By-Laws, the reasonable costs and expenses of preparation and litigation, including attorneys fees, shall be assessed as part of the Association Dues.

(b) Money Judgments recovered by the Homeowners Association in any action or proceeding brought hereunder, including costs, penalties or damages shall be deemed a special fund to be applied to (1) the payment of unpaid litigation expenses; (2) refunding to the Home Owners the cost and expenses of litigation advanced by them; (3) Association Dues, if the

recovery thereof was the purpose of the litigation; (4) repair or reconstruction of the Common Property and Facilities if recovery of damage to same was the motivation for the litigation; and (5) any amount not applied to (1), (2), (3), and (4) above shall be at the discretion of the Board be treated either as (i) a common surplus which shall be allocated and distributed pursuant to the Declaration or (ii) a set off against the Association Dues.

(c) All Association Dues received and to be received by the Board, for the purpose of paying any judgment obtained against the Homeowners Association or the Board and right to receive such funds, shall constitute trust funds and the same shall be expended first for such purpose before expending any part of the same for any other purpose.

(d) In the event that a Home Owner succeeds in obtaining a judgment or order against the Association or the Board, then in addition to any other sums to which said Owner would otherwise be entitled by such judgment or order, he shall also be entitled to the restitution or recovery of any sums paid to the Board as Association Dues for litigation expenses in relation to said action or proceedings.

SECTION 12. Power of Attorney to Institutional Lender.

In the event the Board shall not cause the enforcement procedures provided in Section 10 above to be implemented within the time provided, any Institutional Lender for any Home as to which there shall be such unpaid Association Dues is hereby irrevocably granted a power of attorney to commence such actions and to invoke such other remedies, all in the name of the Association. This power of attorney is expressly stipulated to be coupled with an interest in the subject matter.

SECTION 13. Annual Audit.

In the event the sponsor exercises its right to rent or lease to non-contract occupants, the Sponsor shall be responsible for the payment of the appropriate maintenance fee to the Association, pursuant to the terms of the Public offering Statement, Master Deed and By-Laws of the Condominium. The Board shall submit the books, records and memoranda of the Homeowners Association to an annual audit by an independent or certified public accountant who shall audit the same and render a report thereon in writing to the Board and in summary form to the Members and such Institutional Lenders or other persons, firms or corporations as may be entitled to same.

SECTION 14. Examination of Books.

Each Member shall be permitted to examine the books of account of the Board at a reasonable time on business days; provided, however, that the Treasurer has been given at least ten (10) days prior written notice of the Member's desire to make such an examination.

SECTION 15. Fidelity Bonds.

While the developer maintains a majority of representative on the Executive Board, he shall post a fidelity bond or other guarantee acceptable to the Agency, in an amount equal to the annual budget. For the second and succeeding years, the bond or other guarantee shall include accumulated reserves.

ARTICLE VII

OFFICERS

SECTION 1. Designation.

The principal officers of the Homeowners Association shall be a President, Vice-President, both of whom shall be a member of the Board, a Secretary and a Treasurer. The Board may also appoint such other Assistant

Treasurers and Assistant Secretaries as in their judgment may be necessary. Any two offices, except that of President and Vice-President may be held by one person. All officers must be members of the Homeowners Association, except those appointed or elected by the Board during that period that it is under the control of Trustees appointed by Declarant.

SECTION 2. Election of Officers.

The officers of the Homeowners Association shall be elected annually by the Board at the first Board meeting following each annual meeting of Delegates and such officers shall hold office at the pleasure of the Board.

SECTION 3. Removal of Officers.

Upon an affirmative vote of a two-thirds majority of the entire membership of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

SECTION 4. President.

The President shall be the chief executive officer of the Homeowners Association. He shall preside at all meetings of the Delegates and of the Board. He shall have all of the general powers and duties which are usually vested to the office of President of the Homeowners Association, including but not limited to the power to appoint committees from among the Members of the Homeowners Association from time to time as he may in his discretion deem appropriate to assist in the conduct of the affairs of the Homeowners Association.

SECTION 5. Vice President.

The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board

shall appoint some other Member to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board.

SECTION 6. Secretary.

The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the members of the Homeowners Association; he shall have charge of all books and papers as the Board may direct; and he shall in general, perform all the duties incident to the office of the Secretary.

SECTION 7. Treasurer.

The Treasurer shall have the responsibility of all the Homeowners Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Homeowners Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Homeowners Association in such depositories as may from time to time be authorized by the Board.

SECTION 8. Other Duties and Powers.

The officers shall have such other duties, powers and responsibilities as shall, from time to time, be authorized by the Board.

SECTION 9. Eligibility of Trustees.

Nothing herein contained shall prohibit a Trustee from being an officer.

ARTICLE VIII

COMPENSATION, INDEMNIFICATION AND EXCULPABILITY OF OFFICERS, TRUSTEES AND COMMITTEE MEMBERS

SECTION 1. Compensation.

No compensation shall be paid to the President or the Vice-President or any Trustee or Committee Member for acting as such Officer or Trustee. The Secretary and/or Treasurer may be compensated for their services if the Board determines that such compensation is appropriate. Nothing herein stated shall prevent any Officer Trustee or Committee Member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association, provided however, that any such expenses incurred or services rendered shall have been authorized in advance by the Board, and that no representative of the Declarant shall be entitled to compensation for services while the Board is under Declarant's control.

SECTION 2. Indemnification.

Each Trustee, Officer or Committee Member of the Homeowners Association, shall be indemnified by the Homeowners Association against the actual amount of net loss, including counsel fees, reasonably incurred by or imposed upon him in connection with any action, suit or proceeding to which he may be a party by reason of his being or having been a Trustee, Officer or Committee Member of the Homeowners Association, or delegate, except as to matters as to which he shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Homeowners Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

SECTION 3. Exculpability.

Unless acting in bad faith, neither the board as a body, nor any Trustee, Officer or Committee Member of the Homeowners Association, shall be personally liable to any Member in any respect for any action or lack of action arising out of the execution of his office. Each Owner shall be bound by the good faith actions of the Board, Officers and Committee Member of the Homeowners Association, in the execution of the duties of said Trustees, Officers and Committee Members. Nothing contained herein to the contrary shall serve to exculpate members of the Board of Directors appointed by Declarant from their fiduciary responsibilities.

ARTICLE IX

COVENANTS COMMITTEE

SECTION 1. Purpose.

The Board shall establish a Covenants Committee, consisting of five (5) members appointed by the Board, each to serve for terms to be determined by the Board of Trustees, in order to assure that the Property shall always be maintained in a manner:

- (1) Providing for visual harmony and soundness of repair;
- (2) Avoiding activities deleterious to the aesthetic or property values of the Property;
- (3) Furthering the comfort of the Home Owners, their guests, invitees and lessees; and,
- (4) Promoting the general welfare and safety of the Community.

SECTION 2. Powers.

The Covenants Committee shall regulate the external design, appearance, use and maintenance of the Property in accordance with

standards and guidelines contained in the Declaration, these By-Laws or Rules and Regulations as otherwise adopted by the Board.

The Covenants Committee shall have the power to issue a cease and desist request to an Owner, his guests, invitees, or lessees whose actions are inconsistent with the provisions of the Declaration, these By-Laws, the Rules and Regulations or Resolutions of the Board (upon petition of any Owner or upon its own motion). The Covenants Committee shall, from time to time, as required and if necessary, with the advice of legal counsel, provide interpretations of the Declaration, Articles of Incorporation and By-Laws, Rules and Regulations and Resolutions pursuant to the intent, provisions and qualifications thereof when requested to do so by an Owner or the Board. Any action, ruling or decision of the Covenants Committee may be appealed to the Board by any party deemed by the Board to have standing as an aggrieved party and a vote of a majority of the full authorized membership of the Board may modify or reverse any such action, ruling or decision.

No Owner (other than Declarant) may make any structural additions, alterations or improvements in or to the Home without the prior written approval of the Covenants Committee or impair any easement without the prior written consent of the Covenants Committee, subject to a right of appeal to the Board. No such approvals may be granted without properly completed application having first been made to the Covenants Committee.

The Covenants Committee shall have the obligation to act upon any written application received by it from an Owner for approval of a proposed structural addition, alteration or improvement in such Owners Home within sixty (60) days after receipt of such application in properly completed form. If the Owner of the Home involved has not received notice of the

Covenants Committee's decision within thirty (30) days of the date on which he delivered the properly completed application pursuant hereto, he may notify the Covenants Committee of that fact within forty-five (45) days of the date on which he so delivered such completed application and, if such second notice is given, the Covenants Committee's approval shall be deemed to have been granted unless notice to the contrary is given to the Owner of the property involved within sixty (60) days of the date on which the original completed application was so delivered. If no such second notice is given to the Covenants Committee and no action is taken within the sixty (60) day period after the completed application is received, the application shall be deemed automatically denied. However, such denial shall not prohibit resubmission to the Covenants Committee or appeal to the Board.

The Owner of the Home involved may, within thirty (30) days of the date on which he is given notice of a decision of the Covenants Committee denying a requested approval, give notice to the board of Trustees that he wishes the request to be submitted for decision to the board. Thereupon, unless the request has already been submitted for decision to the Board pursuant to the provisions hereof (in which event the Board shall so notify the Owner), the Board shall submit such request to a decision by a majority of the entire membership of the board and shall promptly notify the Owner thereof. If the Owner of the Home involved has not received notice of the Board's decision within twenty (20) days of the date on which he gave a notice to the Board, pursuant to its subparagraph, he may notify the Association of that fact within twenty-five (25) days of the date on which he gave such notice to the Board, and if such second notice is received by the board within said twenty-five (25) day period, the request shall be

deemed to have been granted unless notice to the contrary is given to the Owner of the Home involved within thirty (30) day of the date on which the original notice was received by the Board. If no such second notice is so received by the Board and no action is taken within the thirty (30) day period after the date the original notice was received by the Board, the application shall be deemed automatically denied.

The decision of any member of the Board on any request for approval submitted to him for decision shall be evidenced by a writing signed by such member.

All other action by the Board, pursuant to these By-Laws, shall be by the action of a majority of the entire membership of the Board and shall be evidenced by a writing signed by them. The Board shall have the power to adopt rules and establish procedures, not inconsistent with the provisions of these By-Laws, with respect to the performance of its functions and conduct of its business hereunder.

Any application to any municipal authority for a permit to make an addition, alteration or improvement in or to any Home must be approved by the Covenants Committee and if approved, shall be executed by the Chairperson of the Covenants Committee or his Delegate and may then be submitted by the Owner. Such approval, however, shall not incur any liability on the part of the Homeowners Association to any contractor, subcontractor, or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom. The Owner shall furnish the Board with a copy of any such permit which he has procured. The provisions of this paragraph shall not apply to Homes owned by Declarant.

SECTION 3. Authority.

The Covenants Committee shall have such additional duties, power and authority as the Board may, from time to time, provide by resolution, including the right to impose fines pursuant to Section 1 of Article V hereof. The Board may relieve the Covenants Committee of any of its duties, powers and authority either generally or on a case by case basis by vote of a majority of its full authorized membership. The Covenants Committee shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or any resolution of the Board. Despite the foregoing, no action may be taken by the Covenants Committee without giving the Owner involved at least ten (10) days prior written notice and affording the Owner the opportunity to be heard, without counsel, with respect to the violation asserted.

Further, any Home Owner who is aggrieved by any decision of the Covenants Committee shall have the right to appeal such decision to the Board, which appeal shall be in writing sent by certified mail to the Secretary of the Homeowners Association within ten (10) days after the Covenants Committee has sent written notice by certified mail, of its decision to the aggrieved Home Owner. Such Home Owner shall be afforded any opportunity to be heard by the Board upon at least ten (10) days prior written notice, and shall have the right to be represented by counsel, all in accordance with any policies or procedures established by the Board. All decisions of the Board shall be final and in order to reserve or modify any decision of the Covenants Committee, there must be a vote of a majority of the full membership of the Board. In the case of any failure to appeal to the Board in strict accordance with the foregoing procedure, the decision of the Covenants Committee shall be final.

ARTICLE X

FISCAL YEAR

The fiscal year of the Homeowners Association shall be on a calendar year basis, or upon such basis as the board shall deem advisable.

ARTICLE XI

DAMAGE OR DESTRUCTION TO THE PROPERTY

If any improvement or Common Area or any part thereof is damaged or destroyed by fire or casualty, the repair, restoration or ultimate disposition of any insurance proceeds shall be in accordance with the following:

1. If the insurance proceeds derived from such loss amount to \$25,000.00 or less, then the board shall contract with any licensed contractor or contractors to rebuild or repair such damage or destroyed portions of the Property in conformance with the original plans and specifications, or, if adherence to such original plans and specifications is impracticable in the Board's opinion, then in conformance with revised plans and specifications provided such repairs or rebuilding shall be of a quality and kind substantially equivalent to the original construction. The board shall accept bids only in specific amounts and shall not enter into any cost-plus or other sliding scale arrangement for compensation to the contractors.

2. If the insurance proceeds derived from such loss exceed \$25,000.00, all such insurance proceeds shall be paid directly to an Insurance Trustee as may be designated by the Board, as Trustee for all Institutional Lenders holding first mortgages on the Property and all Home Owners as their interest may then appear. Disbursement of such funds shall be made only upon the signatures of a majority of the members of the Board.

(a) Upon notification of the receipt of insurance proceeds by the Insurance Trustee, the Board shall enter into a contract for a specific dollar amount with a licensed contractor or contractors for the repair or rebuilding of all of the damaged or destroyed portions of the Property, as nearly as practicable to the original plans and specifications thereof and in accordance with all applicable building codes.

(b) The Board shall enter into said contract with a licensed contractor or contractors which shall have provisions for periodic disbursements of funds by the Trustee. Disbursements to the contractor shall be made subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the board.

(c) The Board shall employ a licensed architect to supervise the repair and rebuilding to insure that such work, services and supplies are of proper quality and that construction is contemplated in a workmanlike manner and according to plans and specifications.

3. If the damage is only to those parts of a Home or Lot for which the responsibility for maintenance and repair is that of the Owner, then that Owner shall be responsible for reconstruction and repair. Subject to the provisions of the Declaration and these By-Laws, in all other instances the responsibility of reconstruction and repair after casualty to common property, shall be that of the Association.

4. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or upon completion of reconstruction and repair, the funds for payment of the costs thereof are insufficient, assessments shall be made against all Owners whose Homes were damaged or destroyed, in sufficient amounts to provide funds for the

payment of such costs. The foregoing provisions of this subparagraph are applicable to the repair and reconstruction to be undertaken by the Association and do not cover damages to those portions of the Home or Lot for which the responsibility of maintenance and repair is that of the Home Owner for which the costs and expenses must be borne by each Owner; provided however, any portion of the insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with an individual Home Owner shall be paid to said Home Owner, or if there is a mortgage endorsement as to such Home, then to the Home Owner and mortgagee jointly.

5. If the amount of available insurance proceeds should exceed the cost of any such reconstruction or repair, the excess shall be retained by the Association and applied by it to reduce the Association Dues.

6. In the event the Association determines not to repair or restore the damaged Property, any insurance proceeds payable to a Home Owner as a result of damage or destruction to his Home or Lot and/or interest in the Common Property are hereby assigned and shall be paid to any appropriate Institutional Lender as their interest may appear, for application to the appropriate mortgage indebtedness and the excess, if any, shall be paid to the appropriate Home Owner.

ARTICLE XII

SPECIAL ASSESSMENTS FOR ADDITIONS, ALTERATIONS OR IMPROVEMENTS BY THE ASSOCIATION

Whenever, in the judgment of the Board, the Common Property requires improvements not funded by existing reserve funds which are expressly earmarked for such improvements costing in excess of \$50,000.00, said improvements shall not be made unless they have been approved by a majority

of votes at a meeting of the Delegates at which a quorum is present. When said approval has been obtained, all Owners shall be assessed for the costs thereof as part of the Association Dues. In the event of any emergency which could cause damage to any portion of the Property, the Board may expend sums in excess of \$50,000.00 to protect the Property and the judgment of the Board shall be final. While the Declarant maintains a majority of the Board, it shall make no additions, alteration, improvements or purchases not contemplated in the Offering which would necessitate a special assessment or a substantial increase in the monthly assessment unless required by a government agency, title insurance company, mortgage lender or in the event of an emergency.

ARTICLE XIII

ASSOCIATION DUES PAYABLE BY DECLARANT

Until the initial assessment for Association Dues is levied by the Homeowners Association, Declarant shall be solely responsible for all Association Dues. Following such event, the Owners of Homes and Declarant shall be responsible for the payment of Association Dues as contemplated by Article IV of the Declaration.

ARTICLE XIV

MISCELLANEOUS

(1) Examination of Books. Each Owner and each Institutional Lender of a Home shall be permitted to examine the books of account of the Board at a reasonable time on business days with at least five (5) days prior written notice.

(2) Notices. All notices hereunder to the Association shall be in writing and forwarded to it at its principal office by certified mail, return receipt requested.

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(3) Waiver. No restriction, condition, obligation or covenant contained in these By-Laws shall be deemed to have been abrogated or waived by reason of the failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

ARTICLE XV

AMENDMENTS

Subject to the restrictions contained in Article VI hereof, these By-Laws, or any of them, may be altered or repealed, or new By-Laws may be made, at any Delegates Meeting of the Homeowners duly constituted for such purpose, and previous to which written notice to Members and the Delegates of the exact language of the amendment or of the repeal shall have been sent, by an affirmative vote of 51% of all the votes entitled to be cast in person or by absentee ballot, except that: (i) the first annual meeting may not be advanced; (ii) the first Board (including replacements in case of vacancies) may not be enlarged or removed; and (iii) the obligation or the proportionate responsibility for the payment of Association Dues with respect to Homes or the Common Property may not be changed by reasons of any such amendment or repeal. No such new By-Law amendment or repeal shall in any way affect the Declarant unless the Declarant has given its prior written consent thereto. Any amendment, repeal or new By-Law need be recorded with the County recording office.

ARTICLE XVI

ENFORCEMENT

The Homeowners Association shall have the power, at its sole option, to enforce the terms of this instrument or any rule or regulation promulgated pursuant thereto, by any or all of the following: self-help; by sending notice to the offending party to cause certain things to be done

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or undone; by restoring the Association to its original position and charging the breaching party with the entire cost or any part thereof; by taking any other action before any court, summary or otherwise, as may be provided by law; by complaint to the duly constituted authorities.

ARTICLE XVII

NOTICE

Any notice required to be sent to any Member under the provision of the Declaration or the Articles of Incorporation or these By-Laws shall be deemed to have been properly sent, and notice thereby given, delivered personally or when mailed, by regular post, with postage at the time of such mailing. Notice to one of two or more co-owners of a Home shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Homeowners Association in writing of any change of address.

ARTICLE XVIII

CONFLICT; INVALIDITY

SECTION 1. Conflict. Despite anything to the contrary herein, if any provision of this Instrument is in conflict with or in contradiction of the Declaration, or with the requirements of any law, then the requirements of said Declaration or law shall be deemed controlling.

SECTION 2. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect in any manner the enforceability or affect the balance of these By-Laws.

ARTICLE XIX

CORPORATE SEAL

The Homeowners Association shall have a seal in circular form having within its circumference the words (Evergreen at Hamilton).

ARTICLE XX
ARBITRATION

Any arbitration provided for in these By-Laws shall be conducted before one arbitrator in Mercer County, New Jersey by the American Arbitration Association in accordance with its rules then obtaining and a decision rendered in such arbitration shall be binding upon the parties and may be entered into any court having jurisdiction. All expenses of arbitration hereunder including the fees and expenses of counsel and experts shall be part of Association Dues.